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FIRST REGULAR SESSION-2013

Legislative Document

No. 1281

S.P. 443

In Senate, April 2, 2013

An Act To Provide for Licensing of Recreational Therapists

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator LACHOWICZ of Kennebec.
Cosponsored by Representative CASSIDY of Lubec and
Senators: BOYLE of Cumberland, CRAVEN of Androscoggin, GRATWICK of Penobscot,
PATRICK of Oxford, Representatives: BEAR of the Houlton Band of Maliseet Indians,
BOLAND of Sanford, MAKER of Calais, SOCTOMAH of the Passamaquoddy Tribe.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA §12004-A, sub-§50** is enacted to read:

3 **50.**

4 Board of Recreational Therapy \$35/Day 32 MRSA §19111

5 **Sec. 2. 32 MRSA c. 141** is enacted to read:

6 **CHAPTER 141**

7 **RECREATIONAL THERAPISTS**

8 **SUBCHAPTER 1**

9 **GENERAL PROVISIONS**

10 **§19101. Definitions**

11 As used in this chapter, unless the context otherwise indicates, the following terms
12 have the following meanings.

13 **1. Board.** "Board" means the Board of Recreational Therapy established in section
14 19111.

15 **2. Recreational therapist.** "Recreational therapist" means an individual who is
16 licensed under this chapter to practice recreational therapy and is qualified to do so by
17 virtue of academic and practical training in accordance with this chapter.

18 **3. Recreational therapy.** "Recreational therapy" means a treatment service
19 designed to restore, remediate and rehabilitate a person's level of functioning and
20 independence in life activities, to promote health and wellness and to reduce or eliminate
21 limitations and restrictions on activities of daily living caused by an illness or disabling
22 condition.

23 **§19102. License required**

24 **1. License required to practice recreational therapy.** A person may not practice
25 or profess to be able to practice recreational therapy or provide recreational therapy in
26 this State unless the person is licensed under this chapter. Nothing in this section may be
27 construed to prohibit students enrolled in board-approved schools or courses in
28 recreational therapy from performing recreational therapy that is incidental to their
29 respective courses of study or supervised work. The board shall adopt rules concerning
30 schools or courses allowing students to practice under this section. Rules adopted
31 pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375,
32 subchapter 2-A.

33 **2. Use of letters.** A recreational therapist may use the letters "TR," "TRS" and
34 "CTRS/L" in connection with the name or place of business of that recreational therapist.

1 **3. Use of words and letters prohibited.** A person or business entity, its employees,
2 agents or representatives may not use in conjunction with that person's name or the
3 activity of the business the words "therapeutic recreation specialist," "therapeutic
4 recreation," "recreational therapy," "recreational therapist," "recreation therapy" or
5 "recreation therapist," the letters "CTRS," "TRS" or "TR" or any other words,
6 abbreviations or insignia indicating or implying directly or indirectly that recreational
7 therapy is provided or supplied, including the billing of services labeled as recreational
8 therapy, unless such services are provided under the direction of a recreational therapist.

9 **§19103. Unlicensed practice**

10 An individual who practices recreational therapy or presents that individual as
11 licensed under this chapter and who does not hold a valid license under this chapter is
12 subject to the provisions of Title 10, section 8003-C.

13 **§19104. Delegation authorized**

14 **1. Delegation authorized.** This chapter may not be construed to prohibit a
15 recreational therapist from delegating to an individual certain activities relating to the
16 practice of recreational therapy, as long as those activities are under the supervision and
17 control of the recreational therapist. "Supervision and control" may not be construed to
18 require the personal presence of the supervising and controlling recreational therapist at
19 the place where those activities take place, unless a physical presence is necessary to
20 provide patient care of the same quality as provided by the recreational therapist. The
21 board may adopt rules identifying activities that may be delegated and appropriate levels
22 of supervision in the practice setting. Rules adopted pursuant to this subsection are
23 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

24 **2. Responsibility.** A recreational therapist who delegates activities as described in
25 subsection 1 to an individual is legally and ethically responsible for all of the professional
26 activities of that individual, and the individual in this relationship is considered the
27 recreational therapist's agent. This subsection may not be construed to apply to an
28 individual acting under a separate license accepted by the State to render services
29 independently.

30 **3. Coercion prohibited.** A person may not coerce a recreational therapist into
31 compromising client safety by requiring the recreational therapist to delegate activities or
32 tasks if the recreational therapist determines that it is inappropriate to do so. A
33 recreational therapist may not be subject to disciplinary action by the board for refusing
34 to delegate activities or tasks or refusing to provide the training required for activities or
35 tasks to be delegated if the recreational therapist determines that the delegation may
36 compromise client safety.

37 **§19105. Evaluation and treatment authorization**

38 **1. Referral required.** Initiation of recreational therapy for an individual for
39 treatment of a medical condition must be based on a referral from a qualified health care
40 professional who, within the scope of the professional's licensure, is authorized to make
41 referrals for health care services.

1 **2. Referral not required.** Prevention, wellness, education, adaptive sports and
2 recreation and related services do not require a referral.

3 **SUBCHAPTER 2**

4 **BOARD OF RECREATIONAL THERAPY**

5 **§19111. Board established; membership; terms**

6 The Board of Recreational Therapy, as established by Title 5, section 12004-A,
7 subsection 50, consists of 3 members appointed by the Governor. All members must be
8 residents of this State. Two members must have been engaged full-time in the provision
9 of recreational therapy for at least one year immediately preceding appointment; these
10 members at all times must be holders of valid licenses issued under this chapter for the
11 practice of recreational therapy. The 3rd member is a public member as defined in Title
12 5, section 12004-A.

13 Appointments are for 3-year terms. Appointments of members must comply with
14 Title 10, section 8009. A board member may be removed by the Governor for cause.

15 **§19112. Meetings; chair; quorum**

16 The board shall meet at least once a year to conduct its business and to elect a chair.
17 Additional meetings are held as necessary to conduct the business of the board and may
18 be convened at the call of the chair or a majority of the board members. Two members of
19 the board constitute a quorum for all purposes.

20 **§19113. Powers and duties**

21 The board has the following powers and duties.

22 **1. Board to administer, coordinate and enforce.** The board shall administer,
23 coordinate and enforce this chapter and evaluate the qualifications of and approve the
24 examinations to be taken by applicants for licensure under this chapter.

25 **2. Rules.** The board may, in accordance with the Maine Administrative Procedure
26 Act, adopt rules commensurate with the authority vested in it by this chapter, including,
27 but not limited to, rules relating to professional conduct and establishing ethical standards
28 of practice. The board, by rule, shall set the standard of professional conduct for
29 licensees under this chapter. Rules adopted by the board pursuant to this subsection are
30 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

31 **SUBCHAPTER 3**

32 **LICENSE**

33 **§19121. Eligibility for license**

34 **1. Qualifications.** The board shall issue a recreational therapist license to an
35 applicant who meets the requirements of this subsection and applies pursuant to this
36 chapter. In order to qualify for licensure as a recreational therapist an applicant must:

- 1 A. Be at least 18 years of age;
- 2 B. Be of good moral character;
- 3 C. Have successfully completed an academic program with a baccalaureate degree or
4 higher from an accredited college or university with a major in therapeutic recreation
5 or a major in recreation or leisure with an option in therapeutic recreation;
- 6 D. Have successfully completed a period of field experience approved by the
7 National Council for Therapeutic Recreation Certification, its successor or another
8 organization approved by the board and by the educational institution where the
9 applicant has met the applicant's academic requirements under the supervision of a
10 certified therapeutic recreation specialist; and
- 11 E. Have successfully completed a proctored certification examination administered
12 by the National Council for Therapeutic Recreation Certification, its successor or
13 another organization approved by the board.

14 **2. Denial of application; reinstatement with conditions.** The board may, upon
15 notice and opportunity for a hearing, deny an application for reinstatement of a license or
16 reinstatement a license with conditions. Conditions imposed may include a requirement for
17 continuing education, practice under the supervision of a recreational therapist or any
18 other conditions set by the board.

19 **§19122. Licensure; another jurisdiction**

20 The board may waive the examination and grant licensure to an applicant for a
21 recreational therapist license who is licensed under the laws of another jurisdiction and
22 who presents proof of current licensure in another jurisdiction that maintains professional
23 standards determined by the board to be substantially equivalent to those set forth in this
24 chapter, if no cause exists for denial of a license under section 19124.

25 **§19123. Scope of practice**

26 **1. Recreational therapy services.** Recreational therapy services that may be
27 provided by a licensee under this chapter include, but are not limited to:

- 28 A. Conducting an individualized assessment for the purpose of collecting systematic,
29 comprehensive and accurate data necessary to determine a course of action and
30 subsequent individualized treatment plan;
- 31 B. Planning and developing the individualized treatment plan that identifies an
32 individual's objectives and treatment strategies to be applied;
- 33 C. Implementing the individualized treatment plan;
- 34 D. Systematically evaluating and comparing the individual's response to the
35 individualized treatment plan and suggesting modifications as appropriate;
- 36 E. Developing a discharge plan in collaboration with the individual, the individual's
37 family and other treatment team members;
- 38 F. Identifying, designing, fabricating, applying and training in the use of adaptive
39 recreational equipment;

1 G. Identifying, applying and evaluating the use of noninvasive and
2 nonpharmacological approaches to reduce or alleviate pain or manage pain to
3 minimize its effect upon daily activities;

4 H. Identifying, providing and educating individuals to use resources that support a
5 healthy, active and engaged life;

6 I. Minimizing the impact of environmental constraints as a barrier to daily activities;

7 J. Collaborating with and educating the individual, the individual's family, caregiver
8 and others to foster an environment that is responsive to the needs of the individual;
9 and

10 K. Consulting with groups, programs, organizations and communities to improve
11 physical and social accessibility.

12 **§19124. Denial or refusal to renew license; disciplinary action**

13 The board has authority to investigate all complaints made to it and all cases of
14 noncompliance with or violation of this chapter. In addition to the grounds enumerated in
15 Title 10, section 8003, subsection 5-A, paragraph A, the board may deny a license, refuse
16 to renew a license or impose the disciplinary sanctions authorized by Title 10, section
17 8003, subsection 5-A, paragraphs B and C for:

18 **1. Unethical practices.** Engaging in unfair or deceptive practices as defined by the
19 rules established by the board or violating the code of ethics adopted and published by the
20 board; or

21 **2. Negligence.** Incompetence, negligence or neglect in the conduct of the practice of
22 recreational therapy.

23 **§19125. License; renewal**

24 A license issued under this chapter expires at a time that the commissioner may
25 designate. An individual licensed under this chapter shall pay the renewal fee as set
26 under section 19126. A renewal is contingent upon evidence of participation in
27 continuing professional education as determined by the board; temporary licenses and
28 trainee permits established by rule by the board are exempt from this requirement. The
29 board shall accept continuing education programs that meet recertification standards of
30 the National Council for Therapeutic Recreation Certification, its successor or another
31 organization approved by the board. A license may be renewed up to 90 days after the
32 date of its expiration upon payment of a late fee and renewal fee under section 19126. An
33 individual who submits an application for renewal more than 90 days after the license
34 expiration date is subject to all requirements governing new applicants under this chapter,
35 except that the board may, in its discretion, waive examination if that application for
36 renewal is received together with the late fee and renewal fee under section 19126 within
37 2 years from the date of the expiration.

38 **§19126. Fees**

39 The Director of the Office of Licensing and Registration within the Department of
40 Professional and Financial Regulation may establish by rule fees for the purposes

1 authorized under this chapter in amounts that are reasonable and necessary for their
2 respective purposes, except that a fee for any one purpose may not exceed \$325 annually.
3 Rules adopted pursuant to this section are routine technical rules as defined in Title 5,
4 chapter 375, subchapter 2-A.

5 **§19127. Inactive status**

6 The board shall adopt rules that provide that an individual licensed under this chapter
7 may, upon written request, be placed on inactive status. The board may place the licensee
8 on inactive status only upon proper application by the licensee. During inactive status,
9 the licensee must renew the license and pay the license fees as set under section 19126,
10 but is not required to meet the continuing education requirements under section 19125.
11 The board shall adopt rules by which a license in an inactive status may be reactivated.
12 Rules adopted pursuant to this section are routine technical rules as defined in Title 5,
13 chapter 375, subchapter 2-A.

14 **Sec. 3. Transition; grandfathering.** Notwithstanding the Maine Revised
15 Statutes, Title 32, section 19111, the initial recreational thereapist members of the Board
16 of Recreational Therapy must be certified by the National Council for Therapeutic
17 Recreation Certification and have been engaged full-time in the provision of recreational
18 therapy for one year. Notwithstanding Title 32, section 19111, one of these initial
19 members serves a one-year term and one serves a 2-year term, as designated by the
20 Governor. The initial public member serves a 3-year term. Notwithstanding Title 32,
21 section 19121, subsection 1, the Board of Recreational Therapy may grant initial licenses
22 to recreational therapists who were certified by the National Council for Therapeutic
23 Recreation Certification prior to October 1, 2013 and who hold an active certified
24 therapeutic recreation specialist credential. The board shall establish a deadline for
25 applications for initial licenses pursuant to this section and shall also establish a starting
26 date on which the board, having been constituted and having held its organizational
27 meeting, will be in a position to begin accepting such applications. Until 6 months after
28 the deadline for submitting applications pursuant to this section, all persons who were
29 practicing and certified as recreational therapists within the State on the effective date of
30 this Act and who meet the requirements of this section for an initial license must be
31 deemed licensed for purposes of Title 32, chapter 141.

32 **SUMMARY**

33 This bill establishes a requirement for licensure of recreational therapists and a board
34 to oversee the process of licensure and the conduct of licensees.